

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARTIN BOOKER,

Plaintiff,

vs.

Case No. 15-cv-12345
Hon. Matthew F. Leitman

CHRISTOPHER T. BURNETT, *et al.*,

Defendants.

**ORDER (1) GRANTING PLAINTIFF'S EX PARTE MOTION TO EXTEND
SUMMONS AND (2) DENYING PLAINTIFF'S EX PARTE MOTION FOR
SUBSTITUTED SERVICE WITHOUT PREJUDICE**

Plaintiff Martin Booker ("Booker") has brought an action against Defendants Christopher T. Burnett ("Burnett"), Bowling Green Freight, Inc., and FCC Equipment Financing, Inc. (collectively "Defendants"), for personal injuries he allegedly sustained in an automobile accident with Defendant Burnett. Booker retained Fast Process Service, LLC to serve a Summons, First Amended Complaint, and Demand for Jury Trial on Defendant Burnett. (*See* ECF #17 at 2, Pg. ID 56.) Fast Process Service, LLC attempted to serve process on Burnett on five separate occasions from July 18, 2015 to August 5, 2015 and was unsuccessful each time. (*See id.*) Booker also requested a waiver of summons pursuant to Federal Rule of Civil Procedure 4(d) by sending Burnett a Notice of Lawsuit and Request to Waive Service of Summons, to which Burnett never responded. (*See*

id.) The Summons in this case is set to expire on October 23, 2015; to date, Burnett still has not been served with process. (*See id.*)

On September 24, 2015, Booker filed an Ex Parte Motion to Extend Summons and Allow Substituted Service (the “Motion”). (*See id.* at 1, Pg. ID 55.) Specifically, Booker has requested that this Court issue an order permitting substituted service of process by the following methods:

1. Sending by certified and regular mail, a copy of the Summons, Amended Complaint and this Order herein to the Defendant, CHRISTOPHER T. BURNETT, at his last known address at 5817 S. Wilson Road, Elizabethtown, KY 42170, whether or not the Defendant acknowledges the receipt of said Summons and Complaint at his respective address;
2. That a copy of the Summons and Amended Complaint and this Order for Substituted Service be served on the Defendant, BOWLING GREEN FREIGHT, INC. through their attorney, Thomas Cardelli, Esq. via certified and regular mail. This should be permitted because Defendant driver, CHRISTOPHER T. BURNETT was in the course and scope of his employment with Defendant owner, BOWLING GREEN FREIGHT, INC., at the date and time of the motor vehicle incident.

(*Id.* at 3, Pg. ID 57.)

The Court is not yet convinced that substitution of service is appropriate. Booker’s complaint indicates that Burnett is a truck driver. (*See* ECF #5 at 3, Pg. ID 20.) Booker has not shown that Fast Process Service, LLC’s efforts to serve process on Booker have failed because Booker is evading service or that he is not susceptible to personal service. Accordingly, **IT IS HEREBY ORDERED** that

Booker's Motion for Substituted Service is **DENIED WITHOUT PREJUDICE** at this time.

IT IS FURTHER ORDERED that Booker's Summons is extended by 90 days from the date of this Order.

IT IS FURTHER ORDERED that Booker shall make diligent efforts to serve Defendant Burnett within the next 60 days. If Booker is unable to serve Defendant Burnett by the end of 60 days after diligent effort, Booker may file a renewed motion for substituted service.

IT IS SO ORDERED.

/s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: September 29, 2015

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 29, 2015, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager

(313) 234-5113